

Delaware Court of Chancery Subjects Non-Employee Director Compensation to the “Entire Fairness” Standard

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On April 30, 2015, the Delaware Court of Chancery held for the second time in three years that a decision by a board of directors or a board’s compensation committee to award equity to non-employee directors as part of their annual compensation constituted a self-interested transaction and, when challenged in a stockholder derivative action, that (a) stockholder demand was excused and (b) the decision would be reviewed under the heightened “entire fairness” standard. This holding comes despite the fact that the equity compensation plan in question, which included a per-person limit on grants, was previously approved by the company’s stockholders.

At issue in the case were restricted stock unit (RSU) grants to eight non-employee directors of Citrix Systems, Inc., which had been made under a stockholder-approved omnibus equity incentive plan that had included a limit on the number of shares that could be granted to any one individual in a given year.

The case, [*Calma v. Templeton et al.*](#), C.A. No. 9579-CB, is a sobering reminder for Delaware companies – as well as companies incorporated in the many jurisdictions that treat Delaware corporate law as persuasive authority – that non-employee director compensation may be susceptible to challenge under the heightened “entire fairness” standard, unless stockholders have approved the actual amount, or “meaningful” and specific limits on the amount, of compensation to be paid to directors.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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